IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 301/1995
Reserved on: 20.7.2007
Date of decision 2.8.2007

Smt. Prem Lata & others. Appellants

Versus

State of H.P. . Respondent

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Appellants: Mr. Bhupender Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate.

For the Respondents: Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Dy. AGs.

Rajiv Sharma, J.

A Challenge has been laid by way of this second appeal to the judgment and decree dated 19.5.1995 passed by the learned District Judge, Solan in civil appeal No.66-S/13 of 1992 reversing the judgment and decree passed by learned Senior Sub Judge, Solan, H.P. in civil suit No. 27-1 of 1998 dated 14.8.1992.

The brief facts necessary for the adjudication of this second appeal are that the appellants-plaintiffs (hereinafter referred to as the plaintiffs for convenience sake) filed a suit in the court of Senior Sub Judge, Solan on 14.1.1988 for declaration. The trial court on the basis of the pleadings of the parties had framed the following issues:

1. **Whether this court has no jurisdiction to try the suit as alleged? OPD**
2. **Whether the suit in the present form is not maintainable? OPD**

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

3. **Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPD**
4. **Whether the suit is bad for non-joinder of necessary parties? OPD**
5. **Whether the plaintiff along with other estate holders is owner in possession of the suit land? OPP**
6. **Whether the impugned order of Deputy Commissioner Solan dated 14.8.1986 transferring the suit land to the Agricultural Department Market Committee Solan is null, void and binding as alleged? OPP**
7. **Relief.**

The trial court had recorded the following findings on the issues framed:

Issue No.1 Court has jurisdiction.
Issue No.2 Suit is maintainable.
Issue No.3 Yes.
Issue No.4 No.
Issue No.5 Yes.
Issue No.6 Yes.
Issue No.7 Yes.
Relief Suit decreed as per operative part of the judgment.

The trial court had decreed the suit on 14.8.1992 and had declared the order dated 14.8.1986 illegal, null and void, not binding upon the plaintiffs. The respondent-defendant (hereinafter referred to as the defendant for convenience sake) was restrained from making the allotment of the land to any one. The defendant feeling aggrieved by the judgment and decree passed by the trial court dated 14.8.1992 had preferred an appeal before the District Judge, Solan on 25.8.1992. The District Judge had framed the following points for determination:

1. **Whether the impugned judgment and decree warrants interference?**
2. **Final order.**

The findings recorded by the District Judge are as under:

Point No.1	No.
Final order	Per operative part of the judgment, the appeal is accepted.

The Additional District Judge had allowed the appeal on 19.5.1995 and had reversed the judgment and decree dated 14.8.1992 passed by the trial court. This second appeal has been preferred by the plaintiffs against the judgment and decree by the District Judge dated 19.5.1995. Initially at the time of admission of this appeal on 16.9.1995, no substantial questions of law were framed. The following substantial questions of law were framed on 11.6.2007:

1. **Whether in a suit filed in a representative capacity, when the suit is permitted to proceed on merits, is not the permission to sue in the representative capacity is implied ?**
2. **When the plaintiff-appellants challenged the illegal order of an Authority in excess to the jurisdiction, can it be held that the jurisdiction of the civil court is barred ?**
3. **When the court holds that the suit is bad for non joinder of necessary parties, is it incumbent for the court to specifically hold as to who are the necessary parties, is it not the duty of the court to afford opportunity to the plaintiff-appellants to array such person as party to the suit ?**

The appellant Harnam Singh died during the pendency of this second appeal and his legal representatives were directed to be brought on record vide order dated 14.12.2006.

Since all the questions are inter-connected, therefore, can be conveniently discussed together.

Mr. Bhupender Gupta, Sr. Advocate had strenuously argued that the judgment and decree passed by the District Judge are not sustainable in the eyes of law.

Learned Advocate General had supported the judgment and decree dated 19.5.1995 passed by the District Judge.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The plaintiffs had only challenged the order dated 14.8.1986 passed by the Deputy Commissioner, Solan. The plaintiffs had not challenged the vesting or re-vesting of the land under the H.P. Village Common Lands (Vesting and Utilization) Act, 1974. Accordingly it is held that the civil court had the jurisdiction to entertain and adjudicate upon the order passed by the Deputy Commissioner, Solan dated 14.8.1986. The findings recorded by the District Judge, Solan that the civil court had no jurisdiction is set aside.

The plaintiffs had assailed the order dated 14.8.1986 passed by the Deputy Commissioner, Solan. The State of H.P. through Collector, Solan was arrayed as party. The Collector, Solan had passed the order dated 14.8.1986 and was the only necessary party for the adjudication of the suit. The District Judge has not given any finding as to who else could be the party before giving the finding that the suit was bad for non-joinder. Accordingly it is held that the suit was maintainable in the present form before the Senior Sub Judge, Solan.

The trial court had framed the following issue: whether the plaintiffs along with other estate-holder are owners in possession of the suit land? OPP. To prove this issue, the plaintiffs have adduced oral as well as documentary evidence. The plaintiffs had tendered the copy of mutation No. 769 Ex. P-2, mutation No. 192 Ex.P-3 and mutation No. 987, copy of Sazra Kistwar Ex.PY-2, copy of impugned order Ex.P2, copy of order

dated 26.3.1985 Ex.P-1. Ex.PX1 is the copy of order dated 14.8.1986. The defendant had tendered copy of Misal Haquiat Ex.DC in evidence.

The trial court vide order dated 5th May, 1989 had directed the plaintiffs to supply the list of estate holders for complying with the Order 1 Rule 8 of the Code of Civil Procedure. The list of estate holders was supplied by the plaintiffs and vide order dated 13th July, 1989, the notices were given to the right holders by beat of drum on filing process fee. In order dated 6th September, 1989, it has come that the notice was duly served by beat of drum on the right holders whose names were supplied pursuant to order dated 5.5.1989. The issues were framed thereafter by the trial court on 17.10.1989. Accordingly there was sufficient compliance of order 1 Rule 8 of the Code of Civil Procedure. The findings recorded by the District Judge, Solan that there was no compliance of Order 1 Rule 8 of the Code of Civil Procedure are liable to be interfered.

The upshot of the above discussion is that:

i) **the suit was maintainable before the civil court;**

ii) **the suit was not bad for non-joinder of necessary parties since the Collector, Solan was arrayed as defendant;**

iii) **since the list of estate holders was supplied and they were served by beat of drum, there was due compliance of order 1 rule 8 of the Code of Civil Procedure.**

Consequently the second appeal is allowed. The judgment and decree dated 19.5.1995 passed by District Judge, Solan is set aside. The judgment and decree passed by the Senior Sub Judge, Solan dated 14.8.1992 is restored. There shall be no order as to costs.

(Rajiv Sharma), J.

August 2, 2007*Awasthi*